

TAX FLASH NEWS

A taxpayer is entitled to foreign tax credit against the MAT liability

Background

Recently, the Bangalore Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Subex Technology Ltd.¹ (the taxpayer) held that credit for the tax paid in a foreign country would be available against the tax liability under the Minimum Alternate Tax (MAT)² provisions of the Income-tax Act, 1961 (the Act).

Facts of the case

- The tax department filed an appeal against allowing of relief of foreign tax credit to the taxpayer under Section 90 of the Act while computing tax liability under the MAT provisions.
- The tax department contended that taxes under the MAT provisions stood on a different footing than the regular tax computed under other provisions of the Act. Therefore, the rebate for taxes paid in a foreign country could not be granted to the taxpayer.
- The taxpayer relied on the decision of the co-ordinate Bench in the case of L&T Ltd³.

Tribunal's ruling

- The Tribunal held that a similar issue had come up before the Mumbai Tribunal in the case of L&T Ltd. In that case, the Mumbai Tribunal observed that the income on which tax has been paid abroad was included in 'book profit' for the purpose of computing MAT. It was held that once taxable income was

determined either under the normal provisions of the Act or MAT provisions, a subsequent portion relating to computation of the tax has to be governed by the normal provision of the Act.

- In that case, it was also held that there was no provision in the Act, debarring granting of credit for tax paid abroad in case income is computed under MAT provisions. It was further held that the taxpayer could not be denied the set-off of tax relief against the tax liability determined under the MAT provisions.
- Therefore, credit for tax paid in a foreign country would be available under Section 90 of the Act against tax liability under the MAT provisions.

Our comments

In the instant case, the Bangalore Tribunal held that credit for the tax paid in a foreign country would be available against the tax liability under the MAT provisions.

It is pertinent to note that under the 'computation of tax liability on total income' in the income-tax return, tax relief under Section 90, 90A and 91 is available from the tax payable whether under the MAT provisions or other provisions of the Act. This indicates that the pre-defined procedural format is already in sync with the Bangalore Tribunal's interpretation.

¹ DCIT v. Subex Technology Ltd. [ITA No.913(B)/2013 (Assessment year: 2009-2010)] – Taxsutra.com

² MAT – Section 115 JB of the Act.

³ ACIT v. L&T Ltd. [ITA No. 4499/Mum/2008, dated 22 April 2009]

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